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6 Attorneys for Defendant  
BARRINGTON BANK & TRUST COMPANY, N.A.  
7

8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**  
10

11 ABELARDO MARTINEZ, JR, an  
individual, and BRITTNEY MEJICO,  
12 an individual,

13 Plaintiffs,

14 v.

15 BARRINGTON BANK & TRUST  
COMPANY, N.A., a national banking  
16 association; and DOES 1-10, inclusive,

17 Defendants.  
18

Case No. 8:18-cv-2069

[Orange County Superior Court, Case  
No. 30-2018-01023234-CU-CR-CJC]

**PETITION AND NOTICE OF  
REMOVAL OF CIVIL ACTION  
UNDER 28 U.S.C. § 1441(b)  
(DIVERSITY JURISDICTION)**

19 **TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL**  
20 **DISTRICT OF CALIFORNIA, PLAINTIFFS, AND THEIR COUNSEL OF**  
21 **RECORD:**  
22

23 PLEASE TAKE NOTICE that Defendant Barrington Bank & Trust  
24 Company, N.A., hereby removes this action from the Superior Court of the State of  
25 California for the County of Orange to the United States District Court for the  
26 Central District of California on the following grounds:  
27  
28

**I. INTRODUCTION**

1  
2  
3 1. This Court has jurisdiction over this action because complete diversity  
4 exists between Plaintiffs Abelardo Martinez and Brittney Mejico (“Plaintiffs”), and  
5 Defendant Barrington Bank & Trust Company, N.A. (“Defendant”).  
6

7 2. Plaintiffs are citizens of the State of California and were citizens of  
8 California at the time of the filing of their Complaint.  
9

10 3. Defendant is now and was at the time this action was commenced a  
11 citizen of the State of Illinois within the meaning of 28 U.S.C. §1332.  
12

13 4. The amount in controversy exceeds \$75,000.  
14

15 5. Pursuant to 28 U.S.C. § 1446(b)(1), this case is being removed within  
16 thirty (30) days of Plaintiffs’ service of the Complaint on Defendant (an out-of-state  
17 party).  
18

19 6. This Court has jurisdiction under 28 U.S.C. § 1332(a) because this is a  
20 civil action between citizens of different states, and the matter in controversy  
21 exceeds \$75,000. Accordingly, Defendant respectfully requests that this Court  
22 exercise its removal jurisdiction over this action.  
23

**II. THE STATE COURT ACTION**

24  
25  
26 7. On or about October 4, 2018, Plaintiffs filed an action against  
27 Defendant titled “*ABELARDO MARTINEZ, JR, an individual, and BRITTNEY*  
28 *MEJICO, an individual, Plaintiffs, v. BARRINGTON BANK & TRUST COMPANY,*

1 *N.A., a national banking association; and DOES 1-10, inclusive*” in the Superior  
 2 Court of the State of California, County of Orange, Case No. 30-2018-01023234-  
 3 CU-CR-CJC (the “State Court Action”). A true and correct copy of the Complaint  
 4 filed by Plaintiffs on October 4, 2018 is attached hereto as **Exhibit “A”** as part of  
 5 the Index of Exhibits. A true and correct copy of the Civil Case Cover Sheet filed  
 6 by Plaintiffs on October 4, 2018 is attached hereto as **Exhibit “B”** as part of the  
 7 Index of Exhibits. A true and correct copy of the Notice of Case Assignment filed  
 8 by the Court on October 4, 2018 is attached hereto as **Exhibit “C”** as part of the  
 9 Index of Exhibits. A true and correct copy of the Payment Receipt filed by the  
 10 Court on October 5, 2018 is attached hereto as **Exhibit “D”** as part of the Index of  
 11 Exhibits. A true and correct copy of the Summons filed by Plaintiffs on October 5,  
 12 2018 is attached hereto as **Exhibit “E”** as part of the Index of Exhibits.

13  
 14 8. Upon information and belief, the Complaint and Summons in the State  
 15 Court Action was sent to Defendant by mail on October 11, 2018. Under California  
 16 Code of Civil Procedure § 415.40, service by this method is “deemed complete on  
 17 the 10th day after such mailing,” or October 21, 2018. Thirty days from service  
 18 have not yet elapsed, and therefore, this removal is timely under 28 U.S.C. §  
 19 1446(b) (“The notice of removal of a civil action or proceeding shall be filed within  
 20 30 days after the receipt by the defendant, through service or otherwise, of a copy of  
 21 the initial pleading . . .”).

22  
 23 9. The Complaint, Civil Case Cover Sheet, Notice of Case Assignment,  
 24 Payment Receipt, and Summons constitute the pleadings, process, and orders, filed  
 25 and served upon or by Plaintiffs and/or Defendant in the State Court Action.  
 26 Exhibits “A” through “E” are attached hereto as part of the Index of Exhibits.

27  
 28

1 **III. THERE IS COMPLETE DIVERSITY BETWEEN BOTH PLAINTIFFS**  
 2 **AND DEFENDANT**

3  
 4 10. The Complaint, and each alleged cause of action contained therein,  
 5 may be properly removed on the basis of diversity jurisdiction, in that this is a civil  
 6 action between citizens of different states and the amount in controversy exceeds the  
 7 sum of \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332. Here, Defendant  
 8 is not a citizen of the State of California now or at the time when Plaintiffs' State  
 9 Court Action incepted on October 4, 2018.

10  
 11 **A. Plaintiffs are Citizens of the State of California**

12  
 13 19. Both Plaintiffs allege that they are residents of the State of California.  
 14 (See Exh. "A," ¶ 7.)

15  
 16 20. While "[r]esidence alone is not the equivalent of citizenship ... the  
 17 place of residence is *prima facie* the domicile." *State Farm Mut. Auto. Ins. Co. v.*  
 18 *Dyer*, 19 F.3d 514, 520 (10th Cir. 1994); *see also Hester v. Horowitz*, No. 14-00413  
 19 JMS-KLP, 2015 WL 127890, at \*2 (D. Haw. Jan. 8, 2015) ("Although residence  
 20 alone is not the equivalent of citizenship, the place of residence is *prima facie* the  
 21 domicile."). It is presumed that a natural person's residence is also her domicile,  
 22 and a party resisting this presumption bears the burden of producing contrary  
 23 evidence. *State Farm*, 19 F.3d at 519; *Lew v. Moss*, 797 F.2d 747, 751 (9th Cir.  
 24 1986).

25  
 26 11. To establish citizenship of a natural person for diversity purposes, the  
 27 party must be both a citizen of the United States and a domiciliary of one particular  
 28 state. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). A

1 person's "domicile" is the place where he or she resides, with the intent to remain or  
2 to return. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (citing  
3 *Lew*, 797 F.2d at 749). Domiciliary is determined at the time the lawsuit was filed.  
4 *Stroteck Corp. v. Air Transp. Ass'n. of Am.*, 300 F.3d 1129, 1131 (9th Cir. 2002).

5  
6 12. Accordingly, Plaintiffs are citizens of the State of California when the  
7 State Court Action was filed and when this Petition and Notice was filed.

8  
9 **B. Defendant is not a Citizen of the State of California**

10  
11 13. If a party is a national bank, it is a citizen of the state in which its main  
12 office is located. *Wachovia Bank v. Schmidt*, 546 U.S. 303, 307 (2006); *Chavez v.*  
13 *JPMorgan Chase & Co.*, 888 F.3d 413, 415, n. 1 (9th Cir. 2018).

14  
15 14. Plaintiffs allege that Defendant's main office is located in Barrington,  
16 Illinois.<sup>1</sup> (See Exh. "A," ¶ 9.) Thus, Defendant is an Illinois citizen and is diverse  
17 as to Plaintiffs.

18  
19 21. Since Plaintiffs are citizens of California and Defendant is a citizen of  
20 Illinois, complete diversity exists between Plaintiffs and Defendant.

21  
22  
23  
24  
25  
26 <sup>1</sup> Although Wintrust Mortgage is not a named defendant, it is important to  
27 note that it, also, is alleged by Plaintiffs to be a citizen of Illinois. (See Exh. "A," ¶  
28 9.)

**IV. THE AMOUNT IN CONTROVERSY EXCEEDS THE**  
**JURISDICTIONAL MINIMUM**

22. According to 28 U.S.C. § 1332(a), “[D]istrict courts . . . have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs and is between . . . citizens of different States.” *See also Matheson v. Progressive Specialty Ins., Co.*, 319 F.3d 1089, 1090 (9th Cir. 2003) (“[J]urisdiction founded on [diversity] requires that the parties be in complete diversity and the amount in controversy exceed \$75,000.”).

23. In addition to statutory damages of \$4,000 per violation pursuant to California Civil Code section 52(a), Plaintiffs seek attorneys’ fees and costs, and injunctive relief. (*See* Exh. “A,” pp. 11-12.)

24. As the Ninth Circuit held in *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413 (9th Cir. 2018), “[t]he amount in controversy [for removal purposes] may include ‘damages (compensatory, punitive, or otherwise) and the cost of complying with an injunction, as well as attorneys’ fees awarded under fee shifting statutes.” *Id.* at 416.

25. Here, the costs associated with the injunctive relief Plaintiffs seek is greater than the amount needed to meet the requisite jurisdictional requirements.<sup>2</sup>

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<sup>2</sup> Assuming for purposes of argument that Plaintiffs object to the introduction of Defendant’s costs to comply with the requested injunction to determine the amount in controversy; District Courts in this Circuit have specifically rejected attempts by plaintiffs to unilaterally determine a defendant’s costs to comply with an injunction in order to defeat removal jurisdiction. *See William G. Silverstein v. Keynetics, Inc., et al. Additional Party Names: Click Sales Inc.*, No. LACV1804100JAKAGRX, 2018 WL 5795776, at \*6 (C.D. Cal. Nov. 5, 2018) (Kronstadt, J.) (“Defendants are better informed than Plaintiff to evaluate the current  
(footnote continued)

1 *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014)  
 2 (the liberal pleading standard regarding the amount in controversy allegation is  
 3 applicable to a defendant's notice of removal on diversity grounds, whereby the  
 4 defendant's notice of removal "need include only a plausible allegation that the  
 5 amount in controversy exceeds the jurisdictional threshold."). Therefore, Defendant  
 6 has met its burden of showing that the amount in controversy in this action exceeds  
 7 \$75,000, and is sufficient for removal jurisdiction.

## 8

## 9 **V. REMOVAL IS TIMELY**

10

11 26. This Notice of Removal is timely because this action is being removed  
 12 within 30 days after service of the State Court Action on Defendant. *See* 18 U.S.C.  
 13 § 1446(b)(1); Cal. Code Civ. Proc. § 415.40 (service by mail on defendants outside  
 14 California becomes effective 10 days after mailing).

15

16 27. Here, service of Plaintiffs' Complaint on Defendant (an out of state  
 17 party) was deemed complete on on October 21, 2018. The Complaint provided  
 18 information from which Defendant could first ascertain that complete diversity  
 19 exists between Plaintiffs and Defendant (who is a resident of Illinois), and the case  
 20 is one which is removable.

21

22 28. Accordingly, removal of the action within 30 days of service of the  
 23 Complaint in the State Court Action is timely.

24

25

26

27 state of their technology and the requirements of a system that could be integrated  
 28 with their existing technology, and would comply with the requested injunction.")

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1           **VI. ASSIGNMENT TO THE SOUTHERN DIVISION IS PROPER**

2  
3           29. Assignment to the Southern Division of the Central District of  
4 California is proper because the State Court Action filed by Plaintiff is pending in  
5 the Superior Court of Orange County. 28 U.S.C. § 1446(a).  
6

7                                   **VII. CONCLUSION**

8  
9           30. For the reasons stated above, this Court has jurisdiction under 28  
10 U.S.C. § 1332 because this is a civil action between citizens of different states, and  
11 the matter in controversy exceeds \$75,000, exclusive of interest and costs.  
12

13           31. Accordingly, Defendant respectfully requests that this Court exercise  
14 its removal jurisdiction over this action.  
15

16 DATED: November 19, 2018

PAYNE & FEARS LLP  
Attorneys at Law

17  
18  
19  
20 By:                     /s/Daniel F. Lula                      
21 **DANIEL F. LULA**

22 Attorneys for Defendant  
23 BARRINGTON BANK & TRUST  
24 COMPANY, N.A.  
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26  
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**INDEX OF EXHIBITS**

<b>EXHIBIT</b>	<b><u>DESCRIPTION</u></b>
EXHIBIT "A":	Complaint filed by Plaintiffs on October 4, 2018
EXHIBIT "B":	Civil Case Cover Sheet filed by Plaintiffs on October 4, 2018
EXHIBIT "C":	Notice of Case Assignment filed by the Court on October 4, 2018
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EXHIBIT "E":	Summons filed by Plaintiffs on October 5, 2018

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